

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN
AND FOR NEW CASTLE COUNTY

TRISHA & ROBERT LAMOURINE,)

Plaintiffs,)

v.)

C. A. No.: 05C-08-236 CLS

MAZDA MOTOR OF AMERICAN, INC. d/b/a)
MAZDA NORTH AMERICAN OPERATIONS)

and)

HERTRICH FAMILY AUTOMOBILE)
DEALERSHIPS, INC., d/b/a HERITRICH)
CAPITOL, a corporation of the State of)
Delaware)

Defendants.)

Date Submitted: February 21, 2007

Date Decided: May 29, 2007

Upon Consideration of Plaintiffs' Motion for Prejudgment Interest
DENIED.

ORDER

Natalie Wolf and Timothy E. Lengkeek, Esquires, Young Conaway
Stargatt & Taylor, LLP, Wilmington, Delaware, Attorneys for Plaintiff.

Robert T. Aulgur, Jr. and Kristi J. Doughty, Esquires, Whittington &
Aulgur, Odessa, Delaware, Attorneys for Defendants.

Polly N. Phillipi, Esquire, Kantrowitz & Phillipi, LLC, Philadelphia,
Pennsylvania, Attorney for Defendants.

SCOTT, J

I. INTRODUCTION

This action arises from the purchase of a defective Mazda RX8 automobile. Plaintiffs Trisha and Robert Lamourine (“Plaintiffs”) purchased the Mazda RX8 from Defendants Mazda and Hertrich Family of Automobile Dealerships, Inc. (“Defendants”) on September 27, 2003. After experiencing problems with the car, Plaintiffs filed a Complaint alleging breach of warranty on several counts. Plaintiffs subsequently filed a Motion for Summary Judgment on the Issue of Prejudgment Interest which this Court denied. Following the Court’s denial, Plaintiffs accepted an offer from Defendants to repurchase the car. This offer did not include prejudgment interest.

In the current Motion, Plaintiffs ask the Court to grant prejudgment interest on their behalf. However, Defendants dispute that Plaintiffs are entitled to prejudgment interest. After reviewing the arguments of both parties, the Court finds that prejudgment interest is not an unqualified right in Delaware. Second, the Court finds that it accrues from the date a plaintiff effectively revokes a defective car to defendant dealers. Applying these findings to the underlying matter leaves Plaintiffs Lamourines without a remedy. For the reasons set

forth below, the Plaintiffs' Motion for Prejudgment Interest is, hereby,
DENIED.

II. FACTS

Plaintiffs Lamourines purchased a Mazda RX8 automobile from Defendants on September 27, 2003. Shortly after the purchase, Plaintiffs experienced a number of problems with the vehicle and returned it to Mazda dealers on five occasions for repairs. The vehicle was, therefore, out of service for approximately 38 days. Plaintiffs claimed that the repair attempts were futile and that the condition substantially and adversely impairs the use, value and safety of the vehicle.

On August 24, 2005, Plaintiffs filed a Complaint alleging breach of warranty on several counts against Defendants. Plaintiffs alleged violations of the Delaware Automobile Warranty Act,¹ the Magnuson Moss Warranty Act,² the Delaware Consumer Fraud Act,³ the Delaware Deceptive Trade Practices Act,⁴ breach of manufacturer's express

¹ 6 *Del. C.* §§ 5001-09.

² 15 *U.S.C.* §§ 2301-11.

³ 6 *Del. C.* §§ 2511-27.

⁴ *Id.* §§ 2531-36.

written warranty, breach of implied warranty of merchantability, breach of dealer's express written labor warranty, breach of dealer's implied warranty of good workmanship, and breach of dealer's implied labor warranty of fitness for intended purpose. The Lamourines' Complaint demanded a judgment comprising of compensatory damages in the amount of a refund of the full purchase price paid for the vehicle, including all taxes, preparation fees, and other charges; general, incidental, and consequential damages; punitive damages pursuant to the Delaware Consumer Fraud Act; treble damages pursuant to 6 *Del. C.* § 2533; prejudgment and post-judgment interest; attorney's fees pursuant to 6 *Del. C.* §§ 5005, 2533 and 15 *U.S.C.* § 2310(d); and costs.

In response to this Complaint, Defendant Mazda ("Mazda") made an offer to Plaintiffs on January 4, 2006. Mazda offered to repurchase the vehicle and pay \$4,500 in counsel fees, but did not offer any sum for prejudgment interest, aggravation and inconvenience. Thereafter, Plaintiffs filed a Motion for Partial Summary Judgment on the Issue of Prejudgment Interest. Defendants note that they again offered to repurchase the vehicle on March 21, 2006 and May 17, 2006, but Plaintiffs refused this offer based on the fee structure.

On August 28, 2006, the Court denied Plaintiffs' Motion for Partial Summary Judgment on the Issue of Prejudgment Interest. It found Plaintiffs' application for prejudgment interest premature due to an existing issue of fact on the amount due. The Court reasoned that, "the risk of premature judgment outweigh(ed) the benefit of declaratory relief." The Court further noted, "In the event that Mazda suffers liability in the suit for violation of the Delaware Automobile Warranty Act and breach of warranty or the question arises in some more concrete and final form, the Lamourines will have the opportunity to seek an order for prejudgment interest."

Immediately following this decision, Plaintiffs indicated that they would accept Defendant Mazda's offer. Mazda requested buy back figures from Plaintiffs' counsel and subsequently set forth an updated offer on October 18, 2006 to repurchase the vehicle. According to Mazda, this offer reflected additional payments made on the loan. The parties subsequently resolved Plaintiffs' claim for damages on December 7, 2006 when Defendants repurchased the car for \$38,245.12.

III. PARTIES' CONTENTIONS

In the current Motion, Plaintiffs claim “prejudgment interest on the agreed upon damages of \$38,004.12 from the date of purchase, September 27, 2003, to the date of payment, December 7, 2006.”⁵ This calculation excludes \$250.00 damages for “aggravation and inconvenience.”⁶

Defendants claim that the purchase price for which Plaintiffs repurchased the vehicle on December 7, 2006 reflects “essentially the same figure that was offered by Mazda over nine months earlier.”⁷ Defendants, therefore, contend that, “By this nine month delay, Mazda was prejudiced in that the vehicle continued to depreciate and lose value.”⁸ Furthermore, “The plaintiffs were not prejudiced by this delay in that they continued to drive the car, (putting several thousand additional miles on it) and they were paid by Mazda for all additional loan payments they made on the car since the initial repurchase offer.”⁹

⁵ Pl. Mot. Prejudgment Interest at 1.

⁶ *Id.*

⁷ Def. Resp. to Pl. Mot. Prejudgment Interest at 2-3.

⁸ *Id.* at 3.

⁹ *Id.*

In considering the aforementioned claims, the Court must make a determination on two key issues: 1) whether prejudgment interest is a matter of right; and 2) when prejudgment interest accrues. Both parties have made the following arguments on these issues.

A. Prejudgment Interest: *Matter of Right?*

At the February 21, 2007 hearing on this matter, counsel for Plaintiffs acknowledged that Delaware Lemon Law does not speak to prejudgment interest or accrual. Counsel for Plaintiffs, therefore, stated that this case presents an opportunity for the Court to clarify Delaware’s law on breach of warranty.

In their Motion, Plaintiffs cite to 6 *Del. C.* §2301 as a general basis in support of prejudgment interest here. 6 *Del. C.* §2301 states that, “the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due.”¹⁰ Accordingly, Plaintiffs then cite to Delaware case law in various contexts and state that prejudgment interest is a matter of right in Delaware.

Defendants respond to this contention by arguing that, “While the courts have acknowledged that a successful plaintiff may be entitled to

¹⁰ Pl. Mot. Prejudgment Interest at 4.

interest on money damages, the holding is not as consistent as the Plaintiffs would have this Court believe.”¹¹ Furthermore, Defendants claim that Plaintiffs fail to cite any cases where parties reached a settlement or where the claims involve breach of warranty. Defendants accordingly cite to the Delaware Superior Court case of *Solarino v. Anthony & Sylvan Pools Corp.* in which the plaintiff’s claims for breach of warranty were submitted to an arbitrator.¹² The arbitrator found in favor of the plaintiffs, but did not award costs and interest.¹³ When plaintiffs filed a Motion for Entry of Judgment, the Superior Court did not award prejudgment interest because it acknowledged the arbitrator’s silence on the matter as a decision to not award such interest.¹⁴

B. Prejudgment Interest: *When Does It Accrue?*

Plaintiffs argue that prejudgment interest is calculated from the date of purchase. In support of this argument, Plaintiffs cite to a Federal District Court case which states that prejudgment interest runs

¹¹ Def. Resp. to Pl. Mot. Prejudgment Interest at 4.

¹² 2004 Del. Super. LEXIS 403.

¹³ *Id.* at *9.

¹⁴ *Id.*

from the date the cause of action “accrues”.¹⁵ Plaintiffs, therefore, state that their claims accrued from the date of purchase (September 27, 2003) because a breach of warranty occurs upon delivery.

Defendants argue that Plaintiffs’ assertion of law “ignores the prevailing law in cases where the claims involve violations of the Lemon Law and breach of warranty.”¹⁶ According to Defendants, Delaware case law holds that interest starts on the date when the payment should have been made.

Finally, Defendants contend that, “(T)o award prejudgment interest of the time during which Plaintiffs enjoyed use and maintained control of the car, would be an unjust and unreasonable benefit to them.”¹⁷ Defendants also note that, “considering that Mazda made its offer to repurchase the car almost one year prior to Plaintiffs’ acceptance, it should not be held accountable for any ‘detention of the compensation’ for which prejudgment interest is intended.”¹⁸

¹⁵ Pl. Mot. Prejudgment Interest at 3 (citing *United California Bank v. Eastern Mountain Sport, Inc.*, 546 F. Supp. 945 at 979 (D. Mass. 1982)).

¹⁶ Def. Resp. to Pl. Mot. Prejudgment Interest at 5.

¹⁷ Def. Resp. to Pl. Mot. Prejudgment Interest at 6 (citing *Norm Gershman’s Things to Wear, Inc. v. Mercedes Benz of N. Am.*, 1989 Del. Super. LEXIS 234).

¹⁸ Def. Resp. to Pl. Mot. Prejudgment Interest at 6 (quoting *Moskowitz v. Mayor and Council of Wilmington*, 391 A.2d 209, 210 (Del. 1978)).

IV. DISCUSSION

In response to the above arguments, the Court finds that prejudgment interest is not an unqualified matter of right. Second, prejudgment interest accrues from the date a plaintiff effectively revokes a defective car to defendant dealers. For the reasons set forth below, the Court, therefore, finds that Plaintiffs are left without a remedy in the matter at hand.

A. Prejudgment Interest Is Not An Unqualified Matter of Right

After reviewing 6 *Del. C.* §§5001-5009, the Court finds that the Delaware statute on automobile warranties, otherwise known as the Delaware “lemon law”, does not address prejudgment interest. The Court also finds that that, after reviewing 15 U.S.C.A. §§2301-2312 of the Magnuson Moss Warranty Act,¹⁹ federal laws on consumer product warranties do not authorize prejudgment interest as a possible remedy either. The Court, therefore, looks to the Uniform Commercial Code for guidance on the matter at hand.

Like the aforementioned law, the Uniform Commercial Code also does not specifically permit prejudgment interest. However, the Court finds authority supporting the contention that, “in the absence of a

¹⁹ 15 U.S.C.A. §§2301 *et. seq.*

governing contract provision to the contrary, a buyer who has been successful in recovering general damages, such as the purchase price.... may recover prejudgment interest on that amount.”²⁰ Courts nationwide have held that a buyer may receive prejudgment interest for damages on breach of contract of sale, even though the damages are unliquidated.²¹ Courts generally award prejudgment interest because it makes a party whole.²² In fact, the United States Supreme Court has long established that:

It is a dictate of natural justice, and the law of every civilized country, that a man is bound in equity, not only to perform his engagements, but also to repair all the damages that accrue naturally from their breach. . . . Every one who contracts to pay money on a certain day knows that, if he fails to fulfill his contract, he must pay the established rate of interest as damages for his non-performance. Hence it may correctly be said that such is the implied contract of the parties.²³

Because courts nationwide generally find prejudgment interest as a remedy for breach of contract of sale, this Court finds that Plaintiffs

²⁰ 67A *Am Jur 2d Sales* §1133 (2006) (citing *S & R Metals, Inc. v. C. Itoh & Co. (America), Inc.*, 859 F.2d 814 (9th Cir. 1988); *Lloyd v. Classic Motor Coaches, Inc.*, 388 F. Supp. 785 (N.D. Ohio 1974)).

²¹ 67A *Am Jur 2d Sales* §1133 (2006) (citing *Miller v. Robertson*, 266 U.S. 243, 45 S.Ct. 73 (1924); *Gilman v. Townmotor Corp.*, 621 A.2d 1260 (Vt. 1992)).

²² *Gilman*, 621 A.2d at 1263.

²³ *Spalding v. Mason*, 161 U.S. 375, 16 S. Ct. 592 (1896).

have a right to prejudgment interest here. The Court, however, turns to Delaware case law in order to determine the extent of this right. In order to make this determination, the Court must look to Delaware court decisions that discuss prejudgment interest as a matter of right in various contexts, such as personal injury and insurance. Delaware cases regarding the “lemon law” and breach of warranty do not directly address this issue.²⁴

Looking to Delaware case law, the Court finds that while prejudgment interest is a matter of right, it is not an unqualified right in Delaware. Trial courts in Delaware have a significant amount of discretion when awarding prejudgment interest. “The Court may take into consideration all of the actions of the parties and apportion fault for any delay, thereby reducing the interest due in accordance with the degree of the plaintiff’s or his attorney’s responsibility for the delay in determining the question at issue.”²⁵ Taking these factors into consideration, the Court notes that Defendants made several valid attempts to settle this case and repurchase the car at issue prior to

²⁴ *Norm Gershman’s Things to Wear, Inc. v. Mercedes Benz of N. Am., Inc.*, 1989 Del. Super. LEXIS 234; *Maconi v. Price Motorcars*, 1993 WL 542571 (Del. Super.).

²⁵ *Bell Atlantic-Delaware, Inc./Verizon Delaware, Inc. v. Saporito*, 2007 Del. LEXIS 116, at *9.

December 7, 2006, but Plaintiffs generally disagreed with the proposed fee structure. Plaintiff finally accepted Mazda's offer to repurchase only after the Court denied Plaintiffs' Motion for Partial Summary Judgment on August 28, 2006. As such, Plaintiffs are partly responsible for the delay here.

Finally, the Court notes that in making a determination on the issue at hand, it does not find Defendants' argument regarding *Solarino*²⁶ persuasive. Defendants incorrectly rely on the decision in *Solarino* to support the contention that prejudgment interest is not a matter of right. The *Solarino* decision differs from the issue here. Unlike this case, the *Solarino* Court decided the issue of "whether costs and interest can be awarded by this Court in addition to the arbitration award during a Motion for Entry of Judgment..."²⁷ The considerations of this Court, therefore, differ from those of *Solarino* because a previous arbitration award is not at issue.

B. Prejudgment Interest Accrues From the Date of Revocation

While courts nationwide recognize an award of prejudgment interest, courts significantly vary as to when interest should start to

²⁶ 2004 Del. Super. LEXIS 403.

²⁷ *Id.* at *4.

accrue.²⁸ Delaware courts, on the other hand, consistently hold that prejudgment interest “starts on the date when payment should have been made.”²⁹

The Delaware Superior Court in *Maconi* applied this case law to an action for the refund of a defective car.³⁰ Holding that prejudgment interest “starts on the date when payment should have been made,” the Court calculated interest from the time plaintiffs effectively revoked acceptance of their car.³¹ Interest, therefore, began to accrue from the time plaintiffs surrendered the car to the defendant dealers.³²

Likewise, the Court in *Norm Gershman’s Things to Wear* also awarded prejudgment interest from the date that the plaintiffs relinquished their defective car to the defendant car dealer.³³

Relinquishment occurred after the second engine failure of the car in

²⁸ 67A Am Jur 2d Sales §1133 (2006) (citing *Automated Medical Laboratories, Inc. v. Armour Pharmaceutical Co.*, 629 F.2d 1118 (5th Cir. 1980)).

²⁹ *Maconi v. Price Motorcars*, 1993 WL 542571 (Del. Super.) at *1 (citing *Citadel Holding Corp. v. Roven*, 603 A.2d 818 (Del. 1992); *Metropolitan Mu.l Fire Ins.*, 220 A.2d 778)).

³⁰ 1993 WL 542571 (Del. Super.) at *1.

³¹ *Id.*

³² *Id.*

³³ 1989 Del. Super. LEXIS 234 at *9.

question.³⁴ In *Norm Gershman*, the defendant, Mercedes, argued that, “In addition to having to give the plaintiff a full refund, the manufacturer would be burdened with the loss in the value of the vehicle due to depreciation over the two year period during which the plaintiff had full use of the vehicle and the manufacturer could not limit its losses by selling the vehicle.”³⁵ Agreeing with this contention, the Court held, “I am persuaded that the plaintiff would be unreasonably benefited if he were entitled to prejudgment interest for the same period of time that he had exclusive control and use of the vehicle in question.”³⁶

In light of Delaware law, this Court finds that prejudgment interest accrues from December 7, 2006, the date Plaintiffs returned the car to Defendants. Like the plaintiffs in *Maconi* and *Norm Gershman’s*, the Plaintiffs here had possession and use of the car at issue for a substantial period of time. Plaintiffs bought the car from Defendants on September 27, 2003 and relinquished it to Defendants on December 7, 2006. Hence, Plaintiffs used the car for a period of over three years before returning the car to Defendants. During this time, Plaintiffs

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

returned the car for service on five occasions, thereby totaling 38 days in which the car was out of service. The time “out of service” is insubstantial in comparison to the amount of time in which the Plaintiffs used the car. Even though Plaintiffs claimed that the car’s defects impaired the safety, value and use of the vehicle, Plaintiffs still used the car and placed additional miles on it during the three year period.

Accordingly, the Court cannot prejudice Defendants by ordering them to pay interest from the date on which Plaintiffs purchased the car. Defendants have already paid Plaintiffs the full amount of the purchase price for a car which has significantly decreased in value. Like the Court in *Norm Gershman*, this Court cannot “unreasonably benefit” Plaintiffs by entitling them to prejudgment interest “for the same period of time that (they) had exclusive control and use of the vehicle in question.”

The Court’s finding that prejudgment interest starts on the day of revocation, however, essentially leaves Plaintiffs without a remedy here. Plaintiffs returned the car to Defendants on December 7, 2006, and Defendants paid the repurchase price of \$38,245.12 to Plaintiffs on the very same day. Hence, unlike the Delaware cases discussed above,

no time lapsed between the date of revocation and payment of the repurchase price. Plaintiffs used the car for the entire three years up until the time at which Defendants reimbursed them.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Prejudgment Interest is, hereby, **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.